REMARKS:

1.   Summary of the Rejections in the Office Action of February 10, 2004

The Examiner objected to claim 21 as allegedly including informalities. The Examiner rejected claims 1-5 and 7 under 35 U.S.C. § 102(e), as allegedly being anticipated by U.S. Patent No. 6,321,984 to McCall *et al.* ("McCall"), and claim 10 under 35 U.S.C. § 103(a), as allegedly being rendered obvious by McCall. The Examiner also rejected claims 6, 9, and 11-21 under 35 U.S.C. § 103(a), as allegedly being rendered obvious by McCall in view of U.S. Patent Publication No. US 2002/0099636 to Narumo. Moreover, the Examiner rejected claim 8 under 35 U.S.C. §103(a), as allegedly being rendered obvious by McCall in view of U.S. Patent Publication No. US 2001/0049626 to Nicholson.

2.   Objections

The Examiner objected to claim 21 as allegedly including informalities. In accordance with the Examiner's suggestion, the Applicants amended claim 21 to replace the word: "computer" with the word: "compute." Therefore, the Applicants respectfully request that the Examiner withdraw the objection to claim 21.

3.   35 U.S.C. § 102(e) Rejections

The Examiner rejected claims 1-5 and 7 under 35 U.S.C. § 102(e), as allegedly being anticipated by McCall.

The Applicants respectfully TRAVERSE the Examiner's anticipation rejection and asserts the following remarks in response:

"A claim is anticipated if and only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131. The Applicants maintain that the Examiner fails to establish that each and every element of 1-5 and 7 is expressly or inherently described in McCall.

a.   **Independent Claim 1**

The Applicants' independent claim 1 recites, in part: "A method for facilitating sale and distribution of fuel to a fuel customer, comprising the following steps: at a server facility, storing store fuel deal data, and processing said fuel deal data to automatically **generate pricing data based on said fuel deal data** and in accordance with a predetermined pricing technique." Thus, in the Applicants' claimed invention as set forth in independent claim 1, fuel pricing data is generated based at least on fuel deal data received at the server facility.

In contrast to the Applicants' claimed invention as set forth in independent claim 1, McCall merely describes "a data processing system that implements customer rewards and includes a database that creates and maintains records associated with customers that make purchases at an associated store." McCall, Column 2, Lines 26-29. Specifically, McCall describes examples of its system in which a customer receives a discount on their fuel purchases based on previous non-fuel purchases that they made at another store (see, e.g., *Id.* at Column 6, Lines 61-67; and Column 7, Lines 1-13), or based on a "membership status" (see e.g., *Id.* at Column 7, Lines 14-28). McCall also describes examples of its system in which a customer that is shopping at a store which does not sell gasoline, e.g., Wal-Mart, may purchase a prepaid receipt for gasoline to be

used at an associated store which sells gasoline. See, e.g., *Id.* at Column 6, Lines 50-60. Moreover, McCall describes examples of its system in which customers receive non-fuel related rewards, e.g., a free car wash, when they purchase fuel. See, e.g., *Id.* at Column 7, Lines 30-55. However, in none of these examples described in McCall is fuel pricing data generated based at least on fuel deal data received at the server facility, as set forth in the Applicants' independent claim 1.

Referring to Column 8, Lines 19-36; and Column 9, Lines 2-4 and 15-19, the Examiner asserts that McCall describes a system in which fuel pricing data is generated based at least on fuel deal data received at the server facility. See, e.g., Office Action, Page 2, Lines 19-22. The Applicants' respectfully disagree with the Examiner's characterization of the system described in McCall. Specifically, the portions of McCall which the Examiner refers to describe a system in which "upon completion of a purchase transaction at POS 200, the customer (if eligible) will be provided with a mechanism 210 that will allow discounted fuel to be purchased at a pump112." McCall, Column 8, Lines 33-36. However, POS 200 is a point of sale terminal located in a retail store, e.g., Wal-Mart. See, e.g., *Id.* at Column 8, Lines 5-11. Consequently, the discount which the customer receives on their next purchase of fuel is **not** based on fuel deal data, and instead, is based on their purchase of **non-fuel** products. As such, McCall does not disclose or suggest a system in which fuel pricing data is generated based at least on fuel deal data received at the server facility, as set forth in the Applicants' independent claim 1.

The Applicants also respectfully note that McCall merely describes providing customers with **discounts** on fuel based on non-fuel purchases, e.g., the

customer gets 10 cents off per gallon on their next fuel purchase. As such, McCall does

not establish **fuel pricing** data based on such non-fuel purchases. Thus, even if McCall

were modified to provide a system in which customers received discounts on their future

fuel purchases based on previous fuel purchases, McCall still would not disclose or

suggest the Applicants' claimed invention, as set forth in independent claim 1, because

such discounts **do not establish the price of the fuel to be purchased by the customer.**

Therefore, the Applicants' respectfully request that the Examiner withdraw the

anticipation rejection of claim 1 and allow the same to issue in a U.S. patent.

b. Dependent Claims 2-5 and 7

Claims 2-5 and 7 depend from allowable, independent claim 1. Therefore,

the Applicants respectfully request that the Examiner withdraw the anticipation rejection

of dependent claims 2-5 and 7.

4. Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected claim 10 under 35 U.S.C. § 103(a), as allegedly

being rendered obvious by McCall. The Examiner also rejected claims 6, 9, and 11-21

under 35 U.S.C. § 103(a), as allegedly being rendered obvious by McCall in view of

Narumo. Moreover, the Examiner rejected claim 8 under 35 U.S.C. §103(a), as allegedly

being rendered obvious by McCall in view of Nicholson.

The Applicants respectfully TRAVERSE the Examiner's obviousness

rejections and asserts the following remarks in response:

In order for the Examiner to establish a prima facie case for obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as the Examiner proposes. Second, there must be a reasonable expectation of success in connection with the Examiner's proposed combination of the references. And third, the prior art references must disclose or suggest all of the claim limitations. MPEP 2143 (emphasis added.) The Applicants maintain that the Examiner fails to establish a prima facie case for obviousness because the prior art references do not disclose or suggest all of the claimed limitations of claims 6 and 8-21.

a. **Independent Claim 10**

The Applicants' independent claim 10 recites, in part: "A method for facilitating sale and distribution of fuel to a fuel customer, comprising the steps of: at a server facility, storing fuel deal data, and processing said fuel deal data to automatically **generate pricing data based on said fuel deal data** and in accordance with a predetermined pricing technique." Thus, in the Applicants' claimed invention as set forth in independent claim 1, fuel pricing data is generated based at least on fuel deal data received at the server facility.

As set forth above, and in contrast to the Applicants' claimed invention as set forth in independent claim 10, McCall merely describes "a data processing system that implements customer rewards and includes a database that creates and maintains records associated with customers that make purchases at an associated store." McCall,

Column 2, Lines 26-29. Specifically, McCall describes examples of its system in which a customer receives a discount on their fuel purchases based on previous non-fuel purchases that they made at another store (see, e.g., *Id.* at Column 6, Lines 61-67; and Column 7, Lines 1-13), or based on a "membership status" (see e.g., *Id.* at Column 7, Lines 14-28). McCall also describes examples of its system in which a customer that is shopping at a store which does not sell gasoline, e.g., Wal-Mart, may purchase a prepaid receipt for gasoline to be used at an associated store which sells gasoline. See, e.g., *Id.* at Column 6, Lines 50-60. Moreover, McCall describes examples of its system in which customers receive non-fuel related rewards, e.g., a free car wash, when they purchase fuel. See, e.g., *Id.* at Column 7, Lines 30-55. However, in none of these examples described in McCall is fuel pricing data generated based at least on fuel deal data received at the server facility, as set forth in the Applicants' independent claim 10.

Referring to Column 8, Lines 19-36; and Column 9, Lines 2-4 and 15-19, the Examiner asserts that McCall describes a system in which fuel pricing data is generated based at least on fuel deal data received at the server facility. See, e.g., Office Action, Page 2, Lines 19-22. The Applicants' respectfully disagree with the Examiner's characterization of the system described in McCall. Specifically, the portions of McCall which the Examiner refers to describe a system in which "upon completion of a purchase transaction at POS 200, the customer (if eligible) will be provided with a mechanism 210 that will allow discounted fuel to be purchased at a pump112." McCall, Column 8, Lines 33-36. However, POS 200 is a point of sale terminal located in a retail store, e.g., Wal-Mart. See, e.g., *Id.* at Column 8, Lines 5-11. Consequently, the discount which the customer receives on their next purchase of fuel is **not** based on fuel deal data, and

instead, is based on their purchase of **non-fuel** products. As such, McCall does not disclose or suggest a system in which fuel pricing data is generated based at least on fuel deal data received at the server facility, as set forth in the Applicants' independent claim 10.

The Applicants also respectfully note that McCall merely describes providing customers with **discounts** on fuel based on non-fuel purchases, e.g., the customer gets 10 cents off per gallon on their next fuel purchase. As such, McCall does not establish **fuel pricing** data based on such non-fuel purchases. Thus, even if McCall were modified to provide a system in which customers received discounts on their future fuel purchases based on previous fuel purchases, McCall still would not disclose or suggest the Applicants' claimed invention, as set forth in independent claim 10, because such discounts **do not establish the price of the fuel to be purchased by the customer.** Therefore, the Applicants' respectfully request that the Examiner withdraw the obviousness rejection of claim 10 and allow the same to issue in a U.S. patent.

b.   **Dependent Claims 6, 8, 9, and 11-21**

Claims 6, 8, 9, and 11-21 each depend from one of allowable, independent claims 1 and 10. "If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious." MPEP 2143.03 (citations omitted). Therefore, the Applicants respectfully requests that the Examiner also withdraw the obviousness rejections of claims 6, 8, 9, and 11-21 and allow the same to issue as a U.S. patent.

CONCLUSION

The Applicants respectfully submit that the above-titled patent application is in condition for allowance, and such action is earnestly requested. If the Examiner believes that an in-person or telephonic interview with the Applicants' representatives will in any way expedite the examination of the above-titled patent application, the Examiner is invited to contact the undersigned attorney of record. The Applicants are enclosing a check in the amount of $225 covering the requisite small entity fee for a two-month extension of time **(the fee for filing a petition to revive unintentionally abandoned patent application was paid on January 21, 2005)**. Nevertheless, in the event of any variance between the fees determined the Applicants and those determined by the U.S. Patent and Trademark Office, please charge any such variance to the undersigned's Deposit Account No. 01-2300 referencing Attorney Docket No. 026735.0004.

Respectfully submitted,

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Date: 9/27/05

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